

COPY

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 14th day of February 2000 between the United States Attorney's Office for the Central District of California (the "USAO"), on the one hand, and JB Oxford Holdings, Inc. (formerly RFS Financial Group, Inc.) ("JBOH") and JB Oxford & Company ("JBOC"), on the other hand.

RECITALS

A. OTRA Securities Group, Inc. ("OTRA") was incorporated in March 1987. Its stock was registered with the Securities and Exchange Commission ("SEC") and was publicly traded on the NASDAQ system.

B. In 1992, OTRA changed its name to RKS Financial Group, Inc. ("RKS Group"). RKS Group common stock was registered with the SEC and was traded on the NASDAQ system.

C. Reynolds Kendrick Stratton, Inc. ("RKS Inc.") was a subsidiary of RKS Group, and a registered broker-dealer providing brokerage services to the public and clearing services to other brokers. As of June 1993, [REDACTED] was the Chief Executive Officer of RKS Inc.; [REDACTED] was its President; and [REDACTED] was a Vice President and the Retail Sales Manager of the firm.

D. In June 1993, a group of investors associated with Canadian stock promoter Irving Kott acquired a controlling interest in RKS Group. The group consisted of [REDACTED]

[REDACTED], [REDACTED], [REDACTED], [REDACTED],

[REDACTED], and [REDACTED]. Subsequently, [REDACTED], [REDACTED], [REDACTED], and [REDACTED] became directors of RKS Group.

E. In July 1993, [REDACTED] was terminated as President of RKS Inc., and was replaced by [REDACTED], who held that position until July 1994 (when RKS Inc. ceased doing business).

F. In October 1993, [REDACTED] resigned as a director of RKS Group.

G. In November 1993, the name of Mountain Financial, Inc., a dormant RKS Group subsidiary that had been registered as a broker-dealer with the SEC, was changed to JB Oxford & Company.

H. In December 1993, RKS Inc. transferred its clearing operations to JBOC.

I. [REDACTED] served as the President of JBOC from January 1994 until May 1994. (He thereafter served intermittently as a consultant for RKS Group until approximately August 1997.)

J. In March 1994, [REDACTED] was hired as JBOC's Chief Administrative Officer; in May 1994, he was named to the RKS Group board.

K. In July 1994, RKS Inc. transferred its retail customer accounts to JBOC. Shortly thereafter, RKS Inc. applied to the SEC to withdraw its registration as a broker-dealer and ceased doing business.

L. In June 1994, JBOH hired Irving Kott to serve as a consultant to JBOH and the JBOH board. Kott was hired pursuant

to a two year written consulting agreement between JBOH and Kott's company, Turret Consultants, Inc.

M. In May 1994, [REDACTED] resigned as a director of RKS Group, and, in September 1994, [REDACTED] purchased [REDACTED] shares in the company.

N. In June 1994, [REDACTED], a Swiss businessman who had been introduced to JBOC by Irving Kott, became a director of RKS Group.

O. In June 1994, [REDACTED] resigned as a director of RKS Group, and, in August 1994, [REDACTED] purchased [REDACTED]'s shares in the company.

P. In August 1994, RKS Group changed its name to JB Oxford Holdings, Inc. JBOH stock was registered with the SEC and was publicly traded on the NASDAQ system.

Q. In August 1994, [REDACTED] was promoted to the position of JBOC's President and became Chairman of the JBOH board.

R. In August 1994, [REDACTED] and Oeri Finance, Inc. ("Oeri Finance") acquired 1,111,111 Units in a private offering by JBOH pursuant to SEC Regulation S. Each Unit consisted of one share of JBOH common stock and two warrants, each of which entitled [REDACTED] and Oeri Finance to purchase an additional share of JBOH common stock.

S. In October 1994, [REDACTED], a close associate of Irving Kott, joined JBOC's representative office in Switzerland. In October 1995, he became the manager of that office. Later, [REDACTED]

was appointed National Director of Sales for JBOC and moved to JBOC's offices in New York.

T. In April 1995, [REDACTED] resigned as a director of JBOH.

U. In May 1995, JBOC entered into an agreement with the SIPC trustee for Adler Coleman Clearing Corporation and began clearing trades for four East Coast introducing brokers: Biltmore Securities, Inc., Greenway Capital Corporation, Monroe Parker Securities, Inc., and Stratton Oakmont, Inc. (the "East Coast Brokerages").

V. In May 1995, JBOH issued a Senior Secured Convertible Note in the principal amount of \$6,500,000 to [REDACTED] and Oeri Finance (the "Oeri Finance Convertible Note"), which was convertible into JBOH common stock.

W. In June 1995, [REDACTED] and Oeri Finance exchanged \$2,000,000 of the Oeri Finance Convertible Note for 200,000 shares of JBOH non-voting preferred stock.

X. In June 1995 and April 1996, [REDACTED] filed reports with the SEC indicating that he was selling all or most of his JBOH shares.

Y. In July 1995, [REDACTED] and Oeri Finance exercised their warrants from the Regulation S offering and acquired an additional 2,222,222 shares of JBOH common stock.

Z. Between July and December 1995, Irving Kott's son, [REDACTED] worked as a consultant for JBOC in JBOC's Beverly Hills California office. In March 1996, he became Director of

Operations of JBOC, and, in July 1997, he was promoted to the position of Chief Operating Officer of JBOC.

AA. In June 1996, the consulting agreement between JBOH and Turrel Consultants, Inc. expired. Irving Kott, however, continued to provide consulting services to JBOH on an ad hoc basis.

BB. In April 1997, [REDACTED] and Oeri Finance converted the 200,000 shares of preferred stock he had acquired in June 1995 to 4,000,000 shares of JBOH common stock.

CC. In July 1997, [REDACTED] exercised certain options that were part of the Oeri Finance Convertible Note, and acquired an additional 318,750 shares of JBOH common stock.

DD. In August 1997, the Federal Bureau of Investigation ("FBI") and the U.S. Postal Inspection Service ("USPIS") executed a search warrant for the premises of the JBOC offices in Beverly Hills, and the USAO, FBI, and USPIS began a criminal investigation of JBOH, JBOC, and certain related individuals and entities.

EE. After the search, Irving Kott ceased providing consulting services to JBOH.

#### REPRESENTATIONS BY JBOH AND JBOC

1. This Agreement is entered into by the USAO in reliance upon the following representations by JBOH and JBOC:

a. In May 1998, Third Capital Partners, LLC ("Third Capital"), a Tennessee limited liability company, purchased from [REDACTED] approximately \$3.4 million of the \$3.9 million of

outstanding principal under the [REDACTED] Finance Convertible Note, which gave Third Capital the right to acquire 4,883,050 shares of JBOH common stock. At the same time, [REDACTED] granted to a principal of Third Capital the right to vote all of the shares of JBOH stock [REDACTED] owned;

b. In May 1998, the remaining \$500,000 in principal under the [REDACTED] Finance Convertible Note was purchased by [REDACTED] [REDACTED], a Canadian lawyer, and his company, 3421643 Canada, Inc., which gave [REDACTED] the right to acquire 714,285 shares of JBOH common stock;

c. After Third Capital acquired control of JBOH, [REDACTED] [REDACTED] [REDACTED] and [REDACTED] resigned as directors of JBOH, and were replaced by three individuals selected by Third Capital and [REDACTED];

d. In June 1998, JBOH issued to Third Capital a Secured Convertible Note in the principal amount of \$2,000,000, which gave Third Capital the right to acquire an additional 2,857,143 shares of JBOH common stock;

e. In December 1998, Third Capital caused JBOH to purchase [REDACTED] interest in JBOH, and [REDACTED] resigned as a director of JBOH. [REDACTED] was replaced on the JBOH board by an individual selected by Third Capital;

f. In February 1999, Third Capital caused JBOH to purchase 369,500 shares of JBOH common stock from [REDACTED] and Third Capital itself purchased 100,000 shares of JBOH common stock from [REDACTED];

g. As of August 1999, Third Capital owned or controlled 569,540 shares of JBOH common stock and had the right to acquire an additional 7,740,992 shares of JBOH common stock, which gave Third Capital a controlling interest in JBOH;

h. Neither Third Capital nor its principals have any past or present connection to Irving Kott or any of the following individuals and entities: [REDACTED], [REDACTED], [REDACTED]

[REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]

[REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]

[REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]

[REDACTED], [REDACTED] Oeri Finance, Inc., Arabella S.A., and E.B.C. Trust Corporation.

i. After acquiring control of JBOH and JBOC in June 1998, Third Capital took the following actions, among others, to sever any relationship between Irving Kott, on the one hand, and JBOH and JBOC, on the other hand:

- i. Replaced all of the existing members of the JBOH board with new directors selected by Third Capital;
- ii. Terminated all business dealings with Irving Kott, and prohibited JBOC's management from having any contact with Irving Kott;
- iii. Terminated [REDACTED];
- iv. Terminated [REDACTED];
- v. Replaced [REDACTED] in all of his positions at JBOC and JBOH;
- vi. Ended JBOC's clearing arrangements with the East Coast Brokerages; and
- vii. Sold the stocks in JBOC's house accounts that

Irving Kott had been recommending, in some cases at a significant loss to JBOC;

j. JBOH's new board and JBOC's new management have no connection to Irving Kott or any of Irving Kott's known associates; and

k. JBOH's new board and JBOC's new management are committed to ensuring that JBOC is in full compliance with all applicable federal and state securities laws and all applicable rules and regulations of the SEC and the National Association of Securities Dealers, Inc. ("NASD"), and to assisting the USAO, the FBI, and the USPIS in completing their investigation.

PROMISES BY JBOH and JBOC

No Future Illegal Conduct

2. JBOH and JBOC shall not commit any federal, state, or local felony offense.

3. JBOH and JBOC shall not, by the use of any means or instruments of transportation or communication in interstate commerce, or by the use of the mails, directly or indirectly:

- a. Employ any device, scheme, or artifice to defraud;
- b. Obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading; or
- c. Engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any purchaser, in the offer or sale of the securities of any



issuer.

4. JBOH and JBOC shall not, by the use of any means or instrumentality of interstate commerce, or of the mails, or any facility of any national securities exchange:

- a. Employ any device, scheme, or artifice to defraud,
- b. Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading, or
- c. Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of the securities of any issuer.

5. JBOH shall not file any annual, quarterly, current, or other report or document with the SEC that is materially false or misleading or which omits to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading, or which omits to disclose any information required to be disclosed in such report or document.

6. JBOC shall not make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills) by means of any manipulative, deceptive, or other fraudulent device or contrivance.

7. JBOC shall not make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of any security (other than an exempted security, or commercial paper, or commercial bills) in connection with which it engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation.

8. The provisions of paragraphs 2 through 7, above, shall terminate thirty-six (36) months from the signing of this Agreement.

9. For purpose of paragraphs 2 through 7, above, it is understood that an award, ruling, finding, or settlement in an arbitration or court proceeding will not, standing alone, establish a violation of any of those provisions.

#### Cooperation

10. JBOH and JBOC agree to cooperate fully with the USAO, the FBI, and the USPIS in this investigation, and any criminal prosecutions arising out of this investigation, by:

a. Voluntarily producing documents, records, or other tangible evidence requested by the USAO relating to this investigation, unless or to the extent the documents, records, or evidence requested are protected by a privilege recognized under federal law;

b. Providing a detailed privilege log for those documents, records, and other evidence requested but withheld under a claim of privilege;

c. To the extent the USAO deems it necessary to complete its investigation, or prosecute any cases arising out of this investigation, negotiating in good faith limited waivers of the attorney-client and work-product privileges;

d. Using its best efforts to make available for interviews, or to testify, present or former JBOH and JBOC officers, directors, employees, agents, consultants, or lawyers, as requested by the USAO;

e. Providing qualified custodians of records to introduce into evidence documents produced by JBOH and JBOC;

f. Responding truthfully and completely, through its counsel or other qualified representative, to any questions or inquiries directed to JBOH or JBOC by the USAO relating to this investigation, unless or to the extent the question or inquiry calls for information recognized as privileged under federal law;

g. Assembling and organizing, in a manner acceptable to the USAO, all documents, records, and other tangible evidence in JBOH or JBOC's possession, custody, or control, or which are publicly available, for the following transactions:

- i. The receipt, purchase, sale, transfer, or conversion, directly or indirectly, of JBOH stock, warrants, options, notes, debentures, or other securities by or on behalf of Irving Kott,

[REDACTED], Oeri Finance, Inc., E.B.C. Trust Corporation, Arabella S.A., Hareton

Sales & Marketing, and/or 3421643 Canada, Inc.; and

- ii. Any trades of \$20,000 or more in value involving JBOH, Hariston Corporation, and/or Synergy Renewable Resources, Inc. securities.

h. Assisting the USAO, FBI, and USPIS in tracing the origin and disposition of the funds involved in the transactions described in paragraph g(i), above;

i. Assisting the USAO, FBI, and USPIS in analyzing the trades described in paragraph g(ii), above;

j. Charting the price of RKS Group/JBOH, Hariston Corporation, Ophthalmic Imaging Systems, Inc., and Synergy Renewable Resources, Inc. stock for the period January 1, 1992 to the present;

k. Providing to the USAO, in a form satisfactory to the USAO, detailed chronologies of:

- i. Significant changes in the ownership and control of RKS Group/JBOH;
- ii. Significant changes in the management personnel of RKS Inc. and JBOC;
- iii. The origin and evolution of Irving Kott's relationship to RKS Group/JBOH, RKS Inc., and JBOC;
- iv. The origin and evolution of JBOC's relationship to the East Coast Brokerages;
- v. Material events in the corporate history of Hariston Corporation and its predecessors, subsidiaries, and affiliates, and the awareness of such events at RKS Inc. and/or JBOC; and
- vi. Such other subjects relating to this investigation as the USAO may reasonably request; and

1. Providing technical assistance to the USAO concerning historical stock prices and market conditions; industry practices, standards, and terminology; operations of a broker-dealer; federal and state securities laws; SEC and NASD rules and regulations; and related and similar matters.

11. The USAO, the FBI, and the USPI shall not disclose any information provided by JBOH and JBOC in compliance with paragraph 10, above, except:

- a. With the express authorization of JBOH or JBOC's counsel;
- b. In compliance with a court order; or
- c. If mandated by law, including, but not limited to, as part of the USAO's discovery obligations in a criminal proceeding.

Payment to the United States

12. JBOH shall pay \$2,000,000 to the United States in settlement of the government's criminal investigation and to offset the government's costs of investigation in this matter.

13. This payment shall be made pursuant to the following schedule:

- a. \$500,000 concurrently with the signing of this Agreement;
- b. Another \$500,000 within twelve (12) months of the signing of this Agreement;
- c. Another \$500,000 within twenty-four (24) months of the signing of this Agreement; and

d. Another \$500,000 within thirty-six (36) months of the signing of this Agreement.

14. JBOH shall execute a promissory note prior to or concurrently with the signing of this Agreement, in a form satisfactory to the USAO, by which:

a. JBOH will be liable for payment of the \$2,000,000 pursuant to the schedule set forth in paragraph 13, above;

b. In the event JBOH fails to make payment of any installment when due, the entire unpaid balance shall become immediately due and payable; and

c. In the event JBOH agrees to sell or transfer a controlling interest in JBOC to a third party, prior to such sale or transfer, JBOH will pay to the United States any portion of the \$2,000,000 remaining to be paid under paragraph 13, above.

15. JBOH will not seek to discharge the payments due under paragraph 13, above, in any bankruptcy proceeding.

16. In the event JBOH and JBOC enter into a settlement with the SEC within one (1) year of the date of this Agreement, which settlement involves the payment of \$1,000,000 or more to the SEC, the USAO agrees that, to avoid a double payment, JBOH will be relieved of its obligation to pay \$500,000 of the remaining sum due under paragraph 13, above.

Appointment of an Independent Expert

17. Within sixty (60) days of the signing of this Agreement, JBOC shall retain a law firm to serve as an Independent Expert. The selection of the Independent Expert must

be approved by the USAO, which may, at its discretion, consult with the SEC and/or the NASD.

18. The Independent Expert shall perform an independent careful, and thorough audit of JBOC to determine whether it is in compliance with all applicable federal and state laws, regulations, and rules governing the purchase, sale, and offer of securities, and the operations and activities of a broker-dealer, and shall prepare a report setting forth in detail its findings, the basis of those findings, and, if appropriate, its recommendations for bringing JBOC into, and keeping JBOC in, compliance with such laws, regulations, and rules.

19. The audit shall be performed and the report completed within one-hundred-twenty (120) days of the appointment of the Independent Expert. This deadline may be extended, for good cause and with the express consent of the USAO, but in no event shall it be extended by more than a total of one-hundred-twenty (120) days.

20. JBOC will cooperate fully with the Independent Expert in performing its audit and preparing its report, and will not deny the Independent Expert access to any information the Independent Expert deems necessary to perform its duties under this Agreement.

21. The Independent Expert shall solicit and consider the views of JBOC's management in response to its preliminary findings and suggestions, and shall include those views in its report or a supplement thereto.

22. The Independent Expert's report shall be submitted in confidence to the USAO. The USAO shall not disclose the report, or any communications between the USAO, the Independent Expert, JBOH, JBOC, and/or JBOH or JBOC'S legal counsel relating to the report, to any third party, except as follows:

- a. With the express authorization of JBOC'S counsel;
- b. In compliance with a court order;
- c. If mandated by law, including, but not limited to, as part of the USAO'S discovery obligations in a criminal proceeding;
- d. To the SEC and/or the NASD, if they agree in writing beforehand to maintain the report as confidential and to raise all available legal objections to its disclosure; and
- e. To a court of law to obtain enforcement of the terms of this Agreement.

23. JBOC shall implement in good faith such of the Independent Expert's recommendations as the USAO may reasonably determine are necessary to bring JBOC into, and keep JBOC in, compliance with all applicable federal and state laws, regulations, and rules governing the purchase, sale, and offer of securities, and the operations and activities of a broker-dealer. In deciding whether a recommendation should be implemented, the USAO shall give due regard to the views of JBOC'S management, and may, at its discretion, consult with the Independent Expert, the SEC, and/or the NASD.



24. The USAO will give JBOC written notice of the recommendations the USAO wants JBOC to implement, and JBOC shall have six (6) months from receipt of that notice to complete implementing those recommendations

25. To the extent reasonably deemed necessary by the USAO, the Independent Expert will monitor the implementation of the recommendations, and will report periodically to the USAO on the progress of the implementation of those recommendations.

26. JBOC (or any successor in interest) shall pay all fees and costs associated with the work of the Independent Expert.

#### Periodic Certifications

27. Semi-annually the Chief Executive Officer, President, Chief Financial Officer, Chief Compliance Officer, and General Counsel of JBOC shall execute certifications, under penalty of perjury, reporting whether during the previous six months:

- a. JBOH or JBOC was charged with any federal, state, local, or foreign felony offense;
- b. Any JBOH or JBOC officer, director, employee, or agent was charged with a federal, state, or local felony offense for acts relating to his or her employment;
- c. JBOH or JBOC was civilly sued for any violations of Title 15, United States Code, Sections 77q, 77x, 78j(b), 78ff, or 78o(c), and Title 17, Code of Federal Regulations, Section 240.10b-5;
- d. JBOC is continuing to adhere to the Independent Expert's recommendations that have been implemented; and

e. There has been any contact, direct or indirect, between JBOH, JBOC, or any of their officers, directors, employees, agents, or lawyers, on the one hand, and Irving Kott or any of Irving Kott's known associates, on the other hand.

28. This provision will terminate thirty-six (36) months after the signing of this Agreement.

Sale and/or Merger of JBOC

29. JBOH shall not sell or transfer any part of its interest in JBOC to Irving Kott or any of Irving Kott's known associates. This provision will terminate thirty-six (36) months after the signing of this Agreement.

30. In the event JBOH sells or transfers a controlling interest in JBOC to a third party, as a condition of the sale or transfer, JBOH will require the third party to assume in writing all of JBOH's obligations under this Agreement. Nothing in this paragraph shall be construed as relieving JBOH of any of its obligations under this Agreement upon or after such a sale or transfer.

31. In the event JBOC is merged with or becomes part of another entity, or otherwise ceases to exist or operate as a distinct corporate entity, JBOH and/or JBOC will, as a condition precedent, require JBOC's successor in interest to assume in writing JBOC's obligations under this Agreement; provided, however, that the USAO may waive such a requirement as regards paragraphs 2 through 7, prohibiting future illegal conduct, paragraphs 17 through 26, concerning the retention and duties of

the Independent Expert, and paragraph 27, concerning periodic certifications, depending upon the particular circumstances involved and considering the purposes behind these provisions.

PROMISES BY THE USAO

32. In return for JBOH and JBOC fully abiding by and performing the foregoing promises, the USAO agrees:

a. Not to charge JBOH, JBOC, or RKS Inc. with any federal offenses (with the exclusion of federal tax offenses or conspiracy to commit such an offense) relating to:

- i. Any beneficial ownership interest Irving Kott may have held, directly or indirectly, in JBOH, and any failure to disclose such beneficial ownership interest to the investing public, the SEC, or the NASD;
- ii. Irving Kott's activities while a consultant for JBOH, and any failure to disclose such activities to the investing public, the SEC, or the NASD; and
- iii. The purchase or sale of any securities issued by JBOH, Hariston Corporation, Ophthalmic Imaging Systems, Inc., and Synergy Renewable Resources, Inc., during the period May 1993 through December 1998.

Such offenses include, but are not necessarily limited to, violations of Title 15, United States Code, Sections 77q, 77x, 78j(b), 78ff, and 78o(c); Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Sections 2, 3, 4, 371, 1001, 1341, 1343, 1956, 1957, 1961, et seq., and 2314.

b. At the request of JBOH or JBOC, to bring to the attention of the SEC, the NASD, and/or any other prosecutorial, regulatory, or administrative authority, the nature and extent of

the cooperation JBOH and JBOC may render pursuant to this Agreement.

BREACH OF AGREEMENT

33. It shall constitute a breach of this Agreement for JBOH or JBOC to materially fail to abide by or fully perform any of the promises set forth in paragraphs 2 through 31, above, during the thirty-six (36) months following the signing of this Agreement.

34. Should the USAO declare this Agreement breached, and should a federal district court find that such a breach occurred:

a. The USAO will no longer be bound by its promises concerning non-prosecution, and will be free to criminally prosecute JBOH and/or JBOC for any federal offense;

b. The USAO will be free to use any information provided by JBOH or JBOC under the terms of this Agreement in any criminal prosecution the USAO may bring against them, and they will be unable to assert that these statements were obtained in violation of any constitutional or statutory right or privilege, or claim that the information is inadmissible because of Rule 11(e)(6) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other statute or rule; and

c. JBOH and/or JBOC will still be required to pay the remainder of the \$2,000,000 due under paragraph 13, above.

35. Nothing in this Agreement shall preclude or limit the United States from bringing a criminal prosecution against JBOH or JBOC for making false statements, obstruction of justice,

perjury, subornation of perjury, or aiding and abetting or conspiracy to commit such offenses, based on JBOH or JBOC's conduct in performing its obligations under this Agreement.

36. In the event that the USAO believes that JBOH or JBOC has breached this Agreement, the USAO shall provide JBOH/JBOC with written notice of such breach, and JBOH/JBOC shall have thirty (30) days therefrom in which to cure the breach.

37. The issue of whether this Agreement has been breached shall be determined by the United States District Court for the Central District of California.

38. If the USAO believes that this Agreement has been breached, and that JBOH or JBOC has not adequately cured the breach, it may initiate a civil action for declaratory relief or such other proceeding as may be appropriate in the United States District Court for the Central District of California, and ask the district court to determine whether the alleged breach occurred.

39. In such an action or proceeding, the following agreements and stipulations shall apply:

a. JBOH/JBOC will designate the Los Angeles, California office of McDermott, Will & Emery as agents for service of process;

b. All substantive issues of law will be governed by federal law, or, in the absence of applicable federal law, by California law; and

c. The United States will have the burden of proving

the alleged breach, and JBOH or JBOC's failure to cure such breach, by a preponderance of the evidence.

40. If the district court should refuse to entertain such an action or proceeding, the issue of whether this Agreement has been breached may be determined in the following manner:

- a. The United States may file criminal charges under seal;
- b. Within thirty (30) days of the filing of the charges, JBOH and/or JBOC may move the district court for a ruling on whether the Agreement has been breached; and
- c. If JBOH or JBOC fails to file such a motion within thirty (30) days, the charges may be unsealed.

#### ASSESSMENT OF PENALTIES IN LIEU OF PROSECUTION

41. Should the USAO declare this Agreement breached, it may, in its sole discretion, elect to forego prosecution of JBOH and/or JBOC under this Agreement, and instead demand in writing that JBOH/JBOC pay a penalty as set forth below:

- a. For each material breach of paragraphs 2 through 7, above, prohibiting future illegal conduct, payment of a penalty of up to \$500,000, the amount to be fixed by the USAO with due regard for the nature, seriousness, and consequences of the breach; provided that the total of such penalties may not exceed \$2,500,000;
- b. For each material breach of paragraph 10, above, relating to cooperation with the USAO, the FBI, and the USPIS, payment of a penalty of up to \$50,000, the amount to be fixed by

the USAO with due regard for the nature, seriousness, and consequences of the breach; provided that the total of such penalties may not exceed \$500,000;

c. For each day a payment due under paragraph 13, above, is late, payment of a penalty of \$5,000, provided that the total of such penalties may not exceed \$100,000.

d. For each material breach of paragraphs 17 through 26, above, relating to the appointment and duties of the Independent Expert and implementation of the Independent Expert's recommendations, payment of a penalty of up to \$50,000, the amount to be fixed by the USAO with due regard for the nature, seriousness, and consequences of the breach; provided that the total of such penalties may not exceed \$500,000; and

e. For each material breach of paragraph 27, above, relating to the submission of periodic certifications, payment of a penalty of up to \$50,000, the amount to be fixed by the USAO with due regard for the nature, seriousness, and consequences of the breach; provided that the total of such penalties may not exceed \$500,000.

42. If the USAO should elect to forego prosecution of JBOH and/or JBOC and instead demand payment of a penalty as set forth in the foregoing paragraph, JBOH/JBOC will have thirty (30) days from the date of the written demand to make such payment. Should JBOH/JBOC fail to make payment within the thirty (30) days, the USAO may seek to criminally prosecute JBOH/JBOC as set forth in paragraphs 34 through 40, above.

43. Payment of a penalty by JBOH and/or JBOC pursuant to paragraphs 41 and 42, above, shall not preclude the USAO from assessing additional penalties under these paragraphs, or seeking to criminally prosecute JBOH and/or JBOC as set forth in paragraphs 34 through 40, above, for another breach of this Agreement by JBOH and/or JBOC. Nor shall it relieve JBOH or JBOC from performing their obligations under this Agreement.

WAIVERS AND TOLLING AGREEMENT

44. As part of this Agreement, JBOH and JBOC agree to each execute the following documents prior to or concurrently with the signing of this Agreement, in a form satisfactory to the USAO:

a. A waiver of any double jeopardy defense arising from the payment of the \$2,000,000 described in paragraphs 12 and 13, above, and any of the penalties described in paragraph 41, above;

b. An agreement tolling the federal statute of limitations for any federal criminal offenses relating to the acts and transactions described in paragraph 32, above, for a period of thirty-six (36) months from the signing of this Agreement; and

c. A waiver of the right to be prosecuted by indictment, and an agreement to be prosecuted by information, for any federal criminal offense relating to the acts and transactions described in paragraph 32, above.



SUPPORTING DOCUMENTS

45. JBOH and JBOC agree to each provide to the USAO the following additional documents prior to or concurrently with the signing of this Agreement:

- a. Duly enacted resolutions of the JBOH and JBOC boards authorizing James G. Lewis to enter into this Agreement and the related Waivers and Tolling Agreement on behalf of JBOH and JBOC;
- b. Certifications by the Secretaries of JBOH and JBOC attesting to the authenticity of such resolutions; and
- c. An opinion from legal counsel that the resolutions were duly and properly enacted, that the JBOH and JBOC boards have the legal authority to delegate authorization to enter into this Agreement and the related Waivers and Tolling Agreement to James G. Lewis, and that the resolutions are in full force and effect.

SCOPE OF THE AGREEMENT

46. This Agreement binds only the USAO; it does not bind the SEC, the NASD, or any other federal, state, local, or foreign prosecutorial, administrative, or regulatory authority.

47. Paragraph 32 of this Agreement, concerning non-prosecution, applies only to the corporate entities JBOH, JBOC, and RKS Inc.; it does not apply to any present or former JBOH or JBOC officer, director, employee, agent, consultant, lawyer, or attorney in-fact.

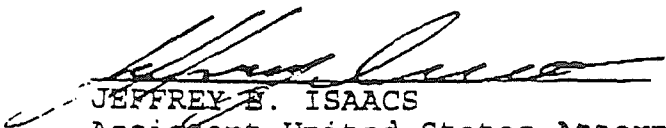
COMPLETE AGREEMENT

48. Except as set forth herein and in the related Waivers and Tolling Agreement, and except as regards issues relating to waiver of the attorney-client and work-product privileges, there are no promises, understandings, agreements, or conditions, express or implied, between the USAO, on the one hand, and JBOH, JBOC, and their counsel, on the other hand, relating to the resolution of this investigation as regards JBOH and JBOC. Nor may any additional promises, understandings, agreements, or conditions be entered into unless in a writing signed by all parties.

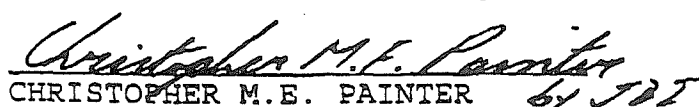
READ AND AGREED TO:

UNITED STATES ATTORNEY'S OFFICE  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ALEJANDRO N. MAYORKAS  
United States Attorney

  
JEFFREY E. ISAACS  
Assistant United States Attorney  
Deputy Chief, Major Frauds Section

2/14/00  
Date

  
CHRISTOPHER M.E. PAINTER  
Assistant United States Attorney  
Computer Crime Coordinator,  
Major Frauds Section

2/14/00  
Date

JB OXFORD HOLDINGS, INC. and  
JB OXFORD & COMPANY

  
\_\_\_\_\_  
JAMES G. LEWIS

President of JB Oxford Holdings, Inc. and  
Chief Executive Officer of JB Oxford & Company

2/14/00  
Date

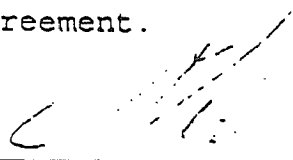
  
\_\_\_\_\_  
JAMES L. SANDERS

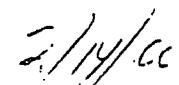
McDermott, Will & Emery  
Counsel for JB Oxford Holdings, Inc. and  
JB Oxford & Company

2/14/00  
Date

CERTIFICATIONS

I, James G. Lewis, am President of JBOH and Chief Executive Officer of JBOC. I have read this Agreement and the related Waivers and Tolling Agreement carefully, and discussed them with counsel for JBOH and JBOC, James L. Sanders of McDermott, Will & Emery. I understand the terms of this Agreement and these related documents, and I voluntarily, knowingly, and willfully agree to all of those terms on behalf of JBOH and JBOC, without force, threat, or coercion. No promises, representations, or inducements, other than those set forth in this Agreement and the related Waivers and Tolling Agreement, have been made to cause me to enter into this Agreement and these related documents. I am satisfied with the representation that James L. Sanders, Gordon H. Greenberg, and McDermott, Will & Emery have provided to JBOH and JBOC in this matter. I have the legal authority to bind JBOH and JBOC in this matter and cause them to enter into this Agreement.

  
 \_\_\_\_\_  
 JAMES G. LEWIS  
 President of JB Oxford Holdings, Inc. and  
 Chief Executive Officer of JB Oxford & Company

  
 \_\_\_\_\_  
 Date

\\  
 \\  
 \\  
 \\

I, James L. Sanders, am counsel for JBOH and JBOC in this matter. I have carefully reviewed and discussed the terms of this Agreement and the related Waivers and Tolling Agreement with James G. Lewis, the President of JBOH and Chief Executive Officer of JBOC. To the best of my knowledge, his decision to enter into this Agreement and these related documents on behalf of JBOH and JBOC is an informed and voluntary one, made with the authority of the JBOH and JBOC boards.



JAMES L. SANDERS  
McDermott, Will & Emery  
Counsel for JB Oxford Holdings, Inc. and  
JB Oxford & Company

2/14/00  
Date

**DEBRA W. YANG**United States Attorney  
Central District of CaliforniaThom Mrozek, Public Affairs Officer  
(213) 894-6947  
thom.mrozek@usdoj.gov

May 4, 2004

**FORMER JB OXFORD CONSULTANT IRVING KOTT AGREES TO PLEAD GUILTY TO 2 FELONY OFFENSES AND PAY \$1 MILLION**

Irving Kott, who in the mid-1990s was a consultant to the Beverly Hills securities brokerage firm JB Oxford & Co., has agreed to plead guilty to two charges of concealing material facts regarding his financial relationship to the firm's publicly traded parent company, JB Oxford Holdings, Inc.

Kott, a 73-year-old Canadian citizen who resides in Montreal, was charged today with two felony counts of concealing material facts from the Securities and Exchange Commission. Kott, who is expected to appear in United States District Court in Los Angeles on May 17, has agreed to plead guilty to the charges.

In early 1993, the president of a cash-strapped company that was later renamed JB Oxford asked Kott if he could help raise additional capital for the company, which was then called Reynolds Kendrick Stratton, Inc. (RKS). Kott helped to form an investor group to raise money for RKS. One of those investors purchased a total of 332,000 shares of RKS, which constituted more than 5 percent of RKS. The 332,000 shares were purchased with funds borrowed from Kott and others, using the shares as collateral for the loan. The first count of a criminal information filed today charges that these facts, and the result that Kott was a beneficial owner of the shares, were concealed from the SEC and the investing public. In particular, in a January 1994 filing with the SEC, Kott caused JB Oxford Holdings to conceal that he beneficially owned the 332,000 shares.

The second count of the information relates to \$6.5 million in loans made to JB Oxford Holdings in 1994 and 1995 by a Swiss company. Kott was the source of approximately 75 percent of those loans. A portion of the interest from the loans was paid to Kott's Canadian company, and Kott benefitted from those payments. In meetings of the JB Oxford Holdings board of directors, Kott failed to disclose his interest in the loans. In April 1995, Kott caused JB Oxford Holdings to file a false Form 10-K with the SEC that failed to disclose his interest in the loans.

In a plea agreement that was also filed today, Kott agreed to pay a total of \$1 million - a \$250,000 criminal fine and \$750,000 in donations to specified charities and institutions. Kott, who has significant health problems and a legally blind wife who requires his daily assistance, has agreed that he should be sentenced to five years of probation. In agreeing to plead guilty and waive extradition from Canada, Kott spared the United States from having to pursue a potentially lengthy extradition process.

In February 2000, JB Oxford agreed to pay \$2 million to resolve a criminal securities fraud investigation relating to Kott's involvement with the firm. As part of that settlement, JB Oxford was required to sever all ties with Kott.

The case against Kott is the result of an investigation conducted by the Federal Bureau of Investigation, in coordination with the Pacific Regional Office of the Securities and Exchange Commission.

Release No. 04-062

Return to the [2004 Press Release Index](#).

Return to the [Home Page](#)